UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No. 1:19-cv-11076-FDS

Paul Jones,

Plaintiff

v.

Dolan Connly P.C., Bank of New York Mellon, Orlans PC, Linda Orlans, Alison Orlans, Select Portfolio Servicing Inc., et. al.,

Defendants

MOTION TO DISMISS ORLANS PC, LINDA ORLANS AND ALISON ORLANS

NOW COME Orlans PC ("Orlans"), Linda Orlans ("Linda") and Alison Orlans ("Alison"), Defendants in the above-captioned matter, and respectfully requests that this Honorable Court dismiss them from this action, with prejudice, pursuant to Fed.R.Civ.P. 12(b)(6).

In support thereof, Orlans, Linda and Alison state the following:

1. The Plaintiff has failed to state a claim upon which relief can be granted as to them.
2. Orlans, Linda and Alison refer the Court to the supporting Memorandum of Law.

Respectfully submitted,
Orlans PC,
Linda Orlans,
Alison Orlans
By their Attorney,

/s/ Effie Gikas
Effie L. Gikas, Esq., BBO # 654693
Orlans PC
465 Waverley Oaks Road, Suite 401
Waltham, Massachusetts 02452
(781) 790-7835
egikas@orlans.com

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Introduction

Orlans PC ("Orlans") is foreclosure counsel for the mortgagee, Defendant The Bank of New York Mellon, f/k/a, the Bank of New York, as Trustee for CWABS, Inc., Asset-Backed Certificates, Series 2004-7, and the loan servicer, Defendant Select Portfolio Servicing, Inc., in regard to the subject property, 572 Park Street, Stoughton, Massachusetts 02072 ("the Property"). Linda is a former employee of Orlans, and Alison is a current employee of Orlans, neither of which should be personally named in this action. Moreover, as foreclosure counsel, Orlans acts on the instructions of its clients, both of which are already named as parties to this action.

Legal Argument

Plaintiff's Complaint does not state a claim upon which relief can be granted as to Orlans. The United States Supreme Court has issued a decision in a case that specifically discusses the standard for dismissal. In Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007), the Court seemingly modified the time-honored standard for dismissal set forth in Conley v. Gibson, 355 U.S. 41, 47 (1957), replacing that decision's "no set of facts" language for a "plausibility" standard

with respect to notice pleading in complaints. In other words, according to the Supreme Court in Bell Atlantic, a court should not dismiss a complaint if there are "enough facts to state a claim to relief that is plausible on its face." 127 S. Ct. at 1974, or if the plaintiff has demonstrated a "reasonably founded hope that the [discovery] process will reveal relevant evidence' to support his or her claims" *Id*. at 1967.

First, the bulk of the claims raised in this action are claims against the mortgagee and/or loan servicer. Orlans cannot be held liable for claims brought against its client. "Generally speaking an attorney is 'immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.'" Sain v. HSBC Mortgage Services, 2009 U.S. Dist. Ct. LEXIS 77336.

Second, the Plaintiff in this action was the mortgagor on the subject loan. Neither Orlans, Linda nor Alison owe him no fiduciary duty. See Balerna v. Gilberti, 281 F.R.D. 63, 65 n.4 (D.Mass. 2012). "Massachusetts law makes it plain as a pikestaff that an attorney does not owe a fiduciary duty to a person who she does not represent." Darlene Manson, et al. v. GMAC Mortgage LLC, et al., 2012 U.S. Dist. LEXIS 59492, at 28 (D. Mass. Apr. 30, 2012), citing Logotheti v. Gordon, 414 Mass. 308, 312 (1993); Robertson v. Gaston Snow & Ely Bartlett, 404 Mass. 515, 522 (1989); Page v. Frazier, 388 Mass. 55, 61-68 (1983). See also MacMillan v. Scheffy, 147 N.H. 362, 365 (2001) ("[W]e decline to impose on an attorney a duty of care to a non-client whose interests are adverse to those of the client."). To find an attorney liable for the actions of his/her client is not only unfair but it impedes effective representation of the client.

Third, in regard to the FDCPA claims raised against Orlans, Linda and Alison, the Supreme Court, in a March 2019 unanimous decision, Obduskey v. McCarthy & Holthus LLP, concluded that conducting a non-judicial foreclosure does not make a law firm a "debt collector" for the

general purposes of the Fair Debt Collection Practices Act (FDCPA), and thus the law firm cannot be held liable under the statute. Despite Plaintiff's assertions to the contrary in his Complaint, the Supreme Court found that those enforcing a security interest (i.e. a foreclosure law firm) are exempt from the "debt collection" definition of the FDCPA. Any correspondence that Orlans mailed to the Plaintiff was part of the foreclosure process, actions taken as strictly legally necessary parts of the foreclosure, and such actions are protected by the Court's opinion.

Conclusion

For all of the reasons set forth above, Plaintiff's Complaint fails to state a claim for which relief can be granted as to Orlans, Linda and Alison. As such, they must be dismissed from this action pursuant to Fed.R.Civ.P. 12(b)(6).

Respectfully submitted,
Orlans PC,
Linda Orlans,
Alison Orlans
By their Attorney,

/s/ Effie Gikas
Effie L. Gikas, Esq., BBO # 654693
Orlans PC
465 Waverley Oaks Road, Suite 401
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CERTIFICATE OF SERVICE

I, hereby certify that on this date the foregoing document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those parties which are non-registered participants.

/s/ Effie Gikas
Effie L. Gikas

Dated: December 5, 2019